

Case 1:09-cv-00490-ILG-RLM Document 16-4 Filed 06/30/2009 Page 1 of 2

AO 441 (Rev. 02/09) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT  
for the

Miriam Aber Plaintiff )  
v. ) Civil Action No. 1:09cv00490-ILG-RLM  
American Security Insurance Company )  
Defendant, Third-party plaintiff )  
v. )  
Nuchem Aber Third-party defendant )

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address)

Nuchem Aber  
1174 41st Street  
Brooklyn, NY 11218

A lawsuit has been filed against defendant American Security Insurance Company, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff Miriam Aber.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

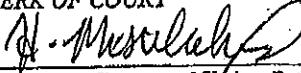
If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may — but are not required to — respond to it.

Date: JUL 01 2009

ROBERT C. HEINEMANN

CLERK OF COURT



Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

MIRIAM ABER,

X

Plaintiff,

VS.

AMERICAN SECURITY INSURANCE COMPANY,

Defendant.

1:09cv00490-ILG-RLM

**AMERICAN SECURITY  
INSURANCE COMPANY'S  
THIRD PARTY COMPLAINT**

AMERICAN SECURITY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff,

VS.

NUCHEM ABER

Third-Party Defendant.

**COMES NOW**, American Security Insurance Company (“American Security”), pursuant to Rule 14 of the Federal Rules of Civil Procedure, and not waiving any rights that it may have to resolve this matter through binding arbitration, files its third-party complaint and would show the following:

**PARTIES**

1. Plaintiff is an adult resident citizen of Brooklyn, New York.
2. American Security is an insurance company and corporation licensed and registered to do business in the State of New York. American Security has its principal place of business in Atlanta, Georgia and is incorporated in the State of Delaware. For purposes of diversity jurisdiction, American Security is deemed to a resident of the State of Georgia and/or the State of Delaware. Therefore, complete diversity of citizenship exists between Plaintiff and American Security in this action in accordance with 28 U.S.C. § 1332.
3. Third-Party Defendant Nuchem Aber is an adult resident citizen of Brooklyn, New York.

### **JURISDICTION AND VENUE**

4. Joining Nuchem Aber as Third-Party Defendant will not destroy the jurisdiction of this court. The exercise of supplemental jurisdiction, pursuant to 28 U.S.C. § 1337(a), is proper over the claims of the American Security against Nuchem Aber. Moreover, venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1331.

### **PROCEDURAL HISTORY**

5. Plaintiff filed her Complaint against American Security on October 31, 2008, in the Supreme Court of the State of New York, County of Kings. A copy of the Complaint is attached hereto as Exhibit "A."

6. Defendants removed this case to this Court pursuant to 28 U.S.C. §1332 on February 6, 2009.

7. Defendant answered the Plaintiff's Complaint on February 11, 2009. A copy of the Answer is attached hereto as Exhibit "B."

### **FACTS**

8. Plaintiff alleges that she suffered damage to her property situated at 1037 42<sup>nd</sup> Street, Brooklyn, New York. *See Plaintiff's Complaint, ¶ 4 and 8.*

9. Nuchem Aber is Plaintiff's spouse and involved in the purchase of the subject property and the issuance of insurance.

10. Nuchem Aber was the person responsible for the care, maintenance, security and safety of the subject property at all times relevant to this lawsuit.

11. Nuchem Aber was negligent, careless and reckless in the care, maintenance and security of the subject property.

12. The fire that occurred on November 6, 2006 at the subject property was caused by the negligent, careless, reckless or intentional actions of Nuchem Aber with respect to his responsibility for the care, maintenance, security and safety of the subject property.

13. American Security insured the subject property under Policy No. 07421428173 for \$800,000.

**INDEMNIFICATION**

14. American Security denies that the Plaintiff has any viable cause of action against it for this claim. By the filing of this Third-Party Complaint, Defendant is in no way admitting that the Plaintiff suffered damage and, that the Plaintiff is entitled to any damages whatsoever, or that Defendant is liable in any way. American Security is seeking a declaration that no coverage exists and no duty to pay arises under the policy in favor of Nuchem Aber.

15. Nevertheless, American Security would show that any and all liability resulting from the loss in question is due to the actions and/or omissions of Nuchem Aber and not to any actions or omissions on the part of American Security. Should it be determined that the Plaintiff is entitled to damages, then American Security is entitled to indemnification from Nuchem Aber for any amounts that American Security might have to pay in damages to the Plaintiff as well as the amount of attorney's fees and costs incurred in connection with the filing of this Third Party Complaint as well as the defense of the underlying action.

**RELIEF**

**WHEREFORE, PREMISES CONSIDERED,** American Security Insurance Company demand judgment against Nuchem Aber for any and all sums that may be adjudged against American Security Insurance Company in favor of Plaintiff, as well as an award of attorney's fees and costs and expenses incurred in connection the filing of this Third Party Complaint as well as the defense of the underlying action.

Dated June 30, 2009

New York, New York.

Lavin, O'Neil, Ricci, Cedrone & DiSipio

By:/s/ Francis F. Quinn

Francis F. Quinn, Esq.  
420 Lexington Avenue, Suite 2900  
New York, New York 10170  
(212) 319-6898

and

Walter D. Willson, Esq., PHV  
Wells Marble & Hurst, PLLC  
Post Office Box 131  
Jackson, Mississippi 39201-0131  
(601) 605-6900

Attorneys for Defendant  
American Security Insurance Company

TO: Johnathan C. Lerner, Esq.  
Abraham, Lerner & Arnold, LLP  
Attorneys for Plaintiff  
292 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10017  
212-686-4655

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
                        )  
COUNTY OF KINGS     )

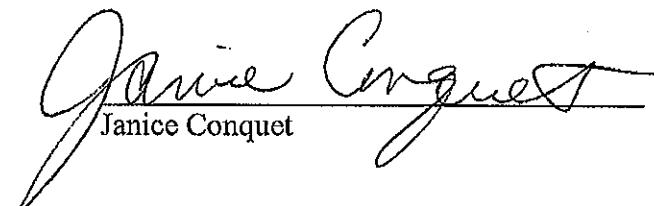
ss.:

Janice Conquet, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Bronx County, New York.

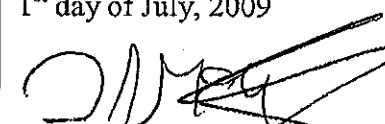
On July 1, 2009, deponent served the within AMERICAN SECURITY INSURANCE COMPANY'S THIRD PARTY COMPLAINT upon:

Johnathan C. Lerner, Esq.  
Abraham, Lerner & Arnold, LLP  
Attorneys for Plaintiff  
292 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10017  
212-686-4655

at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Janice Conquet

Sworn to before me this  
1<sup>st</sup> day of July, 2009

  
TIMOTHY J. MCHUGH  
Notary Public, State of New York  
No. 02MC506248  
Qualified in Suffolk County  
Commission Expires July 1, 2010

Form 63 - DOOR WITH MILITARY MAILING

LAVIN, ONEIL, RICCI, CEDRONE & DISIPIO, ESQS. LAVIN, O'NEIL, RICCI,  
 CEDRONE & DISIPIO, ESQS.  
 U S DISTRICT COURT EASTERN DISTRICT STATE OF NEW YORK

MIRIAM ABER

PLAINTIFF

 index No. 09 CV  
 00490  
 Date Filed

AMERICAN SECURITY INSURANCE COMPANY

DEFENDANT

 Office No.  
 0591-94910  
 Court Date.

AMERICAN SECURITY INSURANCE COMPANY

THIRD-PARTY  
PLAINTIFF

- vs -

NUCHEM ABER

THIRD-PARTY DEFENDANT

STATE OF NEW YORK, COUNTY OF NEW YORK :SS:  
**AZZAM N ABDERRAHMAN** being duly sworn, deposes and says; I am over 18 years of age, not a party to this action, and reside in the State of New York. That on the 15th day of September, 2009 at 7:09 PM at 1174 41ST ST., BROOKLYN, NY 11218 deponent attempted to make personal service of a true copy of the 3RD PARTY SUMMONS & COMPLAINT, in the above entitled action upon **NUCHEM ABER**, the THIRD-PARTY DEFENDANT therein named. Deponent made prior diligent efforts to effect personal service upon said THIRD-PARTY DEFENDANT at the above address, to wit: 09/10/2009 12:56 PM 09/14/2009 7:03 AM \_\_\_\_\_ Deponent spoke to "JOHN" MEAH NEIGHBOR AT 1178 41ST ST, BROOKLYN, NY WHO REFUSED FIRST NAME who stated said THIRD-PARTY DEFENDANT resides there. That personal service could not be made with due diligence upon the said THIRD-PARTY DEFENDANT and therefore deponent on the 15th day of September, 2009 at 7:09 PM at the above address, served a true copy of the aforementioned document(s) herein upon the said THIRD-PARTY DEFENDANT **NUCHEM ABER**,

by affixing the same to the door of THIRD-PARTY DEFENDANT said residence since admittance could not be obtained upon reasonable application or a person of suitable age and discretion found who would receive same, true copy thereof.

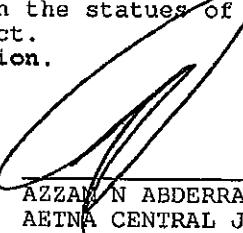
That at the time of service as aforesaid, I asked person spoken to whether the THIRD-PARTY DEFENDANT was in the military service of the State of New York or the United States and received a negative reply. Upon information and belief based upon the conversation and observation as aforesaid I aver that the THIRD-PARTY DEFENDANT is not in the military service, and is not dependent on anyone in the military service of the State of New York or the United States as that term is defined in the statutes of the State of New York, or the Federal Soldiers and Sailors Civil Relief Act.

08/11/2009 Postal Tracer sent for verification.

Sworn to before me this

17TH day of SEPTEMBER, 2009

BRETT GOLUB  
 Notary Public, NASSAU COUNTY  
 01G06129491  
 Qualified in NASSAU COUNTY  
 Commission Expires 06/27/2013

  
 AZZAM N ABDERRAHMAN 0820996  
 AETNA CENTRAL JUDICIAL SERVICES  
 255 BROADWAY, SUITE 1802  
 NEW YORK, NY, 10007  
 Reference No: 7-LORCD-18900

STATE OF NEW YORK, COUNTY OF NEW YORK

**KENNETH WISSNER** being duly sworn, deposes and says; I am over 18 years of age, not a party to this action, and reside in the State of New York. That on 17th day of September, 2009 I deposited in the United States mail a true copy of aforementioned documents properly enclosed and sealed in a post-paid wrapper addressed to the said THIRD-PARTY DEFENDANT(s) at the above address AS EVIDENCED BY CERTIFICATE OF MAILING HEREWITH ATTACHED. That address being

the last known residence, usual place of abode of the THIRD-PARTY DEFENDANT(s).

Copy mailed 1st class mail marked personal & confidential not indicating on the outside thereof, by return address or otherwise that said notice is from an attorney or concerns action against the person to be served.

Sworn to before me this

17TH day of SEPTEMBER, 2009

BRETT GOLUB  
 Notary Public, NASSAU COUNTY  
 01G06129491  
 Qualified in NASSAU COUNTY  
 Commission Expires 06/27/2013

  
 KENNETH WISSNER 721352  
 AETNA CENTRAL JUDICIAL SERVICES  
 225 BROADWAY, STE# 1802, NEW YORK, NY 10007  
 Reference No: 7-LCORD-18900



This Certificate of Mailing provides evidence  
This form may be used for domestic or international  
mailing.

From:

OO /AJS  
SUITE 1802  
225 BROADWAY  
NEW YORK NY 10007

To:

LORCD-79  
NUCHEN ABER  
1174 41ST ST.  
BROOKLYN, NY 11218

PS Form 3817, April 2007 PSN 7530-02-000-9065

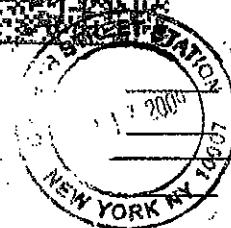


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09/17/2009

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